



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,803	12/05/2003	Vikas Agarwal	JP920030194US1	2259
7590 Frederick W. Gibb, III McGinn & Gibb, PLLC Suite 304 2568-A Riva Road Annapolis, MD 21401				
05/16/2008				
EXAMINER				
CUFF, MICHAEL A				
ART UNIT		PAPER NUMBER		
3627				
MAIL DATE		DELIVERY MODE		
05/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/729,803

Applicant(s)

AGARWAL ET AL.

Examiner

Michael Cuff

Art Unit

3627

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12 and 14-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12 and 14-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The new claims 18-21 recite "said allocating of said resource usage comprises at least one of evenly splitting said overlapping usage between said two different service requests and said overlapping usage in a weighted manner ..."

There two problems. One is that "said overlapping usage" and "said two different service requests" lack antecedent basis. This leads to the second issue, which is, if one has overlapping requests as required by the independent claims, it is contrary to the requirement of "said two different service requests". For the purposes of examination, the examiner will consider the new claims to cover the concept that usage overlaps, but the requests do not. From paragraph [0020].

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-12 and 14-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Halliday et al.

Halliday et al. shows, figure 4, a system for accurate time and usage based metering of client application or client application feature usage and the reporting of said usage to a site on a public network.

From page 3, second column:

A basic overview of operation of the present invention is as follows:

A user will first create an account with the central billing site 1J and add some credit to his account using well known financial on site or remote transaction facilities and methods.

The user will then load from a data storage medium (such as a magnetic disk or tape, optical disk including CD ROM and DVD, electronic storage media including ROMcard and RAM-card, or any other suitable data storage means), or download from a proprietor's website to his local computer, one or more specially configured software packages. These packages may include, in addition to the client application, an application library having metering means for developing and communicating usage information to an also included metering monitor. An included login tool provides an interactive front end to the metering monitor and enables the user to logon to the remote metering system. The logon process will map the local user on the client computer to an account held in the remote database, and such account will be charged as usage of an application is accumulated (process accounting information for use of computing resources). Once logged on, any applications running as a local user will be charged to

the remote account. The metering monitor software on the client computer is responsible for accepting usage information from a client application and forwarding that information to the central billing server. Further, the metering monitor is operative to track application exits and to close charging sessions for applications that exit spuriously. In an alternative embodiment of the present invention, the metering monitor may also act as a proxy server, accumulating metering information and forwarding the information as a batch to the central server at periodic intervals set by the server. This is intended to minimize the amount of time the client computer needs to be in contact with its metering server.

Applications (service request) are executed. As the applications execute vendor code calls to the client library to indicate that features are in use, the library will forward this information to the metering monitor. The metering monitor (recording) will then associate this application with a server account via the map of logged-in users and forward the information to the metering server.

On the metering server, usage reports are compared to a tariff sheet for the user and the account credit value is reduced by an amount as determined by the rate (proportion, relative weight, weighted manner) and length of use of a feature. Alternatively, charges could be accumulated and billed to the user. While the system of the present invention retroactively accumulates and charges for features used, facilities are included to prevent misuse of the system. These facilities include: means for disabling the client applications if usage information does not reach the metering server on a periodic basis, and each communication with the server adds several metrics to

help determine if the user is trying to circumvent the system. The metrics may include but are not limited to: transmission times, local times, CPU usage, memory usage and user information.

Page 5, paragraph [0077] shows overlapping requests, includes active lists, it then checks at 9B for the existence of another metering monitor running on the same the client computer using the same the configuration file. If such a metering monitor exists, the newly started monitor quits.

From Webster's Dictionary, allocate can mean to set apart or earmark.

Multiple clients are using vendor code (a computing resource), which means that vendor code has been set apart for their use or vendor code is being allocated for each client. Because the system has a means for disabling the code, it can refuse to allocate resource usage. The overlapping request is addressed above.

The system uses a pool of features in order to provide an application. A feature is an atomic chargeable unit of functionality. It is in this way the overlapping usage or features used in more than one application can be allocated for different applications or service requests.

Examiner, per 37 CFR 1.104 (c) (2), has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of

the claimed invention, as well as the context of the passage as taught by the prior arts of disclosed by the examiner.

Response to Arguments

Applicant's arguments filed 2/6/08 have been fully considered but they are not persuasive.

Applicant asserts that the prior art does not show overlapping software applications. The examiner does not concur. The rejection write up has been modified to more clearly show how software "features" make up "applications" such there can be an overlap in a request or and overlap in usage with different requests.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cuff whose telephone number is (571) 272-6778. The examiner can normally be reached on 8:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Cuff/
Primary Examiner, Art Unit 3627